REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Writ Petition (C) Nos. 14312-13 of 2006

Date of Decision : 22-02-2007

MOHD.TAHIR SIDDIQUI & ANR ..... Petitioner
Through Mr.Anzar Hussain, Advocate.

versus

THE VICE CHANCELLOR J.M.I. & O ..... Respondent
Through Mr.M.A.Siddiqui, Advocate.

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the reporter or not ? Yes
3. Whether the judgment should be reported in the `Digest?' Yes.

REKHA SHARMA, J. (ORAL)

The petitioners, namely, Mohd. Tahir Siddiqui and Deepak Kumar Ambuj had applied for appointment to the post of lecturers in the Department of Fine Arts and Art Education pursuant to an advertisement issued by Jamia Millia Islamia University for filling up the said posts. The advertisement specified the following qualification :-

> "**Qualification for post of Lecturer in : History of Art, Art Education (Painting), Fine Arts (Painting), Fine Arts (Method & Material):**
>
> 4/5 years Degree/Diploma in an appropriate branch of Fine Arts after 10+2

And

Master of Fine Arts (MFA) with first division in relevant branch of Fine Arts or Art Education

And

At least two years of teaching at +2 level or college level."

Admittedly, the petitioners did not possess one of the essential qualifications so prescribed i.e. 'At least two years of teaching at +2 level or college level'. Yet, they claim that they possessed the requisite qualification. According to them, they have qualified the National Educational Test (NET) which is a qualification laid down by the University Grants Commission as an alternative to the two years of experience at +2 or college level and that this qualification was also recommended by the Board of Studies of the Department of Fine Arts and Art Education for appointment to the post of lecturers. It is alleged that respondent Nos. 1 to 3 in order to favour their own candidates intentionally left out NET as one of the eligibility criteria for the appointments to the posts in question. Hence, this writ petition by them praying for quashing the whole process of appointment and also seeking a direction for making NET as a compulsory qualification for the post of lecturers in the Department of Fine Arts and Art Education.

It is submitted by the respondents that the writ petition is liable to be dismissed at the threshold itself for it has been filed belatedly when the whole process of appointment has been completed and even the persons selected have been put in place. It is further

submitted that the writ petition suffers from the vice of non-impleadment of those persons as respondents who have been selected to the post for it is they who will be most affected, in case, as prayed, the process of selection is quashed. On merits, the respondents have filed a short affidavit refuting the case set up by the petitioners. It is stated that the University can lay down its own qualification for appointments to the post in question and in this regard it derives power from Section 19(1) of the Jamia Millia Islamia Act, 1988 read with Statute 14(2) of the Jamia Millia Islamia Act, 1988.

Since reliance has been made on these two provisions, it will be appropriate to reproduce the same insofar as they are relevant to the issue.

Section 19(1) of the Jamia Millia Islamia Act reads as under:

> "19(1) – The Majlis–i–Muntazimah (Executive Council) shall be the principal executive body of the University."

Statute 14(2) of the Jamia Millia Islamia Act reads as under:

> "14(2) – Subject to the provisions of the Act, the Statutes and the Ordinances, the Majlis–i–Muntazimah (Executive Council) shall, in addition to all other powers vested in it, have the following powers, namely: -
>
> (i) to create teaching and academic posts, to determine the number and emoluments of such posts and to define the duties and conditions of service of Professors, Readers, Lecturers and other academic staff and Principals to Institutions and Schools:
>
> Provided that no action shall be taken by the Majlis–i–Muntazimah (Executive Council) in respect of the number, qualifications and the emoluments of teachers and academic staff otherwise than after

consideration of the recommendation of the Majlis–i–Talimi (Academic Council).

(ii) to appoint such Professors, Readers, Lecturers and other academic staff, as may be necessary and Principals of Institutions on the recommendations of the Selection Committee constituted for the purpose under Statute 25 and to fill up temporary vacancies therein;

A perusal of the above quoted provisions of the Act does go to support the case of the respondents. It is apparent from Statute 14(2) of the Jamia Millia Islamia Act, 1988 that the Executive Council i.e. the Majlis–i–Muntazimah can lay down qualifications for the post of Professors, Readers, Lecturers and other academic staff provided it does so after consideration of the recommendations of the Majlis–i–Talimi (Academic Council). The respondents, along with the counter affidavit, have filed on record the recommendations of the Academic Council. The relevant part of the recommendations reads as under:-

> "After deliberation, the Majlis (AC) approved the recommendations of the Board of Studies of the Department of Fine Arts & Art Education in respect of qualifications for direct recruitment and promotion guidelines for the post of Lecturer, Reader and Professor of the said Department endorsed by the Faculty Committee with slight modification in the prescribed qualification for the post of Professor under promotion as given at Annexure VII."

The qualifications to the post of Lecturer recommended by the Academic Council do not provide for National Educational Test (NET) as one of the criteria for appointment to the said post. The respondents along with the counter affidavit have also filed the approval granted by the Executive Council to the recommendations made by the Academic Council.

It is well settled that if power is derived from a Statute and no fetters are attached to it other than those laid down in the Statute itself, any other recommendations by any other Body cannot whittle down the powers as vested by the Act. Therefore, to say, that the recommendations of the Board of Studies or the University Grants Commission laying down NET as one of the qualifications would be binding on the Academic Council and Executive Council of the Jamia Millia Islamia University would be putting fetters on their powers.

In this connection, reference may also be made to a judgment of the Supreme Court in **University of Delhi** v. **Raj Singh and others** AIR 1995 Supreme Court 336. The question which arose in this case was whether the Regulations which lay down the qualifications by the University Grants Commission for a person to be appointed to the teaching staff of a University and institutions affiliated to it were valid and mandatory and the University or the institution were bound to comply with the qualification so laid down. In this connection, it has been held by the Hon'ble Apex Court that the qualifications laid down by the University Grants Commission do not impinge upon the powers of the University to select its teachers and it is not entrenched by regulations framed under the University Grants Commission.

For the aforesaid reasons, I find no merit in the writ petition and the same is dismissed.

CM 11264/2006 in W.P.(C) 14312-13/2006

Since the writ petition has been dismissed, the application

does not survive. The same is accordingly dismissed.

CM 11263/2006 in W.P.(C) 14312-13/2006

This application is for stay. As the writ petition has been dismissed, no question of stay arises. The application is accordingly dismissed.

REKHA SHARMA, J

FEBRUARY 22, 2007
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